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**DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Part 12**

**CBP Dec. 12-17**

**RIN 1515-AD92**

**EXTENSION OF IMPORT RESTRICTIONS ON ARCHAEOLOGICAL AND  
ETHNOLOGICAL MATERIALS FROM GUATEMALA**

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological materials from Guatemala. These restrictions, which were last extended by CBP Dec. 07-79, are due to expire on September 29, 2012, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State (Department of State), has determined to extend the bilateral Agreement between the Republic of Guatemala and the United States to continue the imposition of import restrictions on the archaeological materials from Guatemala and to add restrictions on certain ethnological materials. The Designated List of cultural property described in Treasury Decision (T.D.) 97-81 is revised in this document to reflect the addition of the ethnological materials. The import restrictions imposed on the archaeological and ethnological materials

covered under the Agreement will be in effect for a 5-year period, and the CBP regulations are being amended accordingly. These restrictions are being imposed pursuant to determinations of the Department of State under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

**EFFECTIVE DATE:** September 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George F. McCray, Esq., Chief, Cargo Security, Carriers and Immigration Branch, Regulations and Rulings, Office of International Trade, (202) 325-0082. For operational aspects, Virginia McPherson, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6563.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (hereafter, the Cultural Property Implementation Act or the Act) (Pub. L. 97-446, 19 U.S.C. 2601 et seq.), signatory nations (State Parties) may enter into bilateral or multilateral agreements to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the

restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each such period not to exceed five years, where it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). Under the Act and applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)).

On April 15, 1991, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 91-34 in the **Federal Register** (56 FR 15181) imposing emergency import restrictions on Pre-Columbian archaeological artifacts from the Peten Region of Guatemala and accordingly amending 19 CFR 12.104g(b) pertaining to emergency import restrictions. These restrictions were effective for a period of 5 years and were subsequently extended for a 3-year period by publication of T.D. 94-84 in the **Federal Register** (59 FR 54817).

On September 29, 1997, the United States entered into a bilateral Agreement with Guatemala concerning the imposition of (non-emergency) import restrictions on archaeological materials from the Pre-Columbian cultures of Guatemala (the 1997 Agreement). The 1997 Agreement included among the materials covered by the restrictions the archaeological materials then subject to the emergency restrictions imposed by T.D. 91-34. On October 3, 1997, the former United States Customs Service published T.D. 97-81 in the **Federal Register** (62 FR 51771), which amended 19 CFR 12.104g(a) to reflect the imposition of restrictions on these materials and included a list designating the types of archaeological materials covered by the restrictions.<sup>1</sup> These restrictions were to be effective through September 29, 2002. (T.D. 97-81 also removed the emergency restrictions for Guatemala from the CBP regulations.)

The restrictions were subsequently extended, in 2002 by T.D. 02-56 (67 FR 61259) and in 2007 by Customs and Border Protection Decision (CBP Dec.) 07-79 (72 FR 54538), to September 29, 2012.

On March 12, 2012, by publication in the **Federal Register** (77 FR 14583), the Department of State proposed to extend the Agreement. By request of the Republic of Guatemala, and pursuant to the statutory and decision-making process, the Designated List of materials covered by the restrictions is being amended to include certain ecclesiastical ethnological materials of the Conquest and Colonial Periods of Guatemala, c. A.D. 1524 to 1821. Thus, the Agreement

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<sup>1</sup> The materials covered by the restrictions, prior to this final rule, were described in the CBP regulations as: "Archaeological material from sites in the Peten Lowlands of Guatemala, and related Pre-Columbian material from the Highlands and the Southern Coast of Guatemala." 19 CFR 12.104g(a).

now covers both the previously covered archaeological materials, as set forth in the Designated List published in T.D. 97-81, and the additional ethnological materials (see 19 U.S.C. 2604, authorizing the Secretary of the Treasury, by regulation, to promulgate and, when appropriate, revise the list of designated archaeological and/or ethnological materials covered by an agreement between State Parties).

The Department of State reviewed the findings and recommendations of the Cultural Property Advisory Committee, and, on August 7, 2012, the Assistant Secretary for Educational and Cultural Affairs, Department of State, determined that the cultural heritage of Guatemala continues to be in jeopardy from pillage of certain archaeological objects and is also in jeopardy from pillage of certain ecclesiastical ethnological materials dating to the Conquest and Colonial Periods of Guatemala (c. A.D. 1524 to 1821). The Assistant Secretary made the necessary determination to extend the import restrictions for an additional five-year period to September 29, 2017, and to include in their coverage these ecclesiastical ethnological materials. An exchange of diplomatic notes reflects the extension of the restrictions, as described in this document and as applicable to the revised Designated List set forth in this document.

Thus, CBP is amending 19 CFR 12.104g(a) accordingly. Importation of covered materials from Guatemala will be restricted through September 29, 2017, in accordance with the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c.

In this document, the Designated List of articles that was published in T.D. 97-81 is amended to include ecclesiastical ethnological material dating to the Conquest and Colonial Periods of Guatemala (c. A.D. 1524 to 1821). The articles described in the Designated List set forth below are protected pursuant to the Agreement. (It is noted that there are no revisions to the section of the Designated List pertaining to covered archaeological objects. It is reprinted as a convenience.)

### Designated List

This Designated List, amended as set forth in this document, includes Pre-Columbian archaeological materials that originate in Guatemala, ranging in date from approximately 2000 B.C. to approximately A.D. 1524, including, but not limited to, objects comprised of ceramic, stone, metal, shell, and bone that represent cultures that lived in the Peten Lowlands, the Highlands, and the South Coast of Guatemala. The List also includes certain categories of ethnological materials used in ecclesiastical contexts in Guatemala dating to the Conquest and Colonial periods (approximately A.D. 1524 – 1821), including sculptures in wood and other materials, objects of metal, and paintings on canvas, wood, or metal supports relating to ecclesiastical themes. The Designated List, and accompanying image database, may also be found at the following Internet Web site address: <http://exchanges.state.gov/heritage/culprop/gtfact.html>.

The list set forth below is representative only. Any dimensions are approximate.

Pre-Columbian Archaeological Material (dating from approximately 2000 B.C. to A.D. 1524)

I. Ceramic/Terracotta/Fired Clay -- A wide variety of decorative techniques are used on all shapes: fluting, gouged or incised lines and designs, modeled carving, and painted polychrome or bichrome designs of human or animal figures, mythological scenes or geometric motifs. Small pieces of clay modeled into knobs, curls, faces, etc., are often applied to the vessels. Bowls and dishes may have lids or tripod feet.

A. Common Vessels.

1. Vases - (10-25 cm ht).
2. Bowls - (8-15 cm ht).
3. Dishes and plates - (27-62 cm diam).
4. Jars - (12.5-50 cm ht).

B. Special Forms.

1. Drums - polychrome painted and plain (35-75 cm ht).
2. Figurines - human and animal form (6-15 cm ht).
3. Whistles - human and animal form (5-10 cm ht).
4. Rattles - human and animal form (5-7 cm ht).
5. Miniature vessels - (5-10 cm ht).
6. Stamps and seals - engraved geometric design, various sizes/shapes.
7. Effigy vessels - in human or animal form (16-30 cm ht).
8. Incense burners - elaborate painted, applied and modeled decoration

in form of human figures (25-50 cm ht).

II. Stone (jade, obsidian, flint, alabaster/calcite, limestone, slate, and other).

A. Figurines - human and animal (7-25 cm ht).

B. Masks - incised decoration and inlaid with shell, human and animal faces (20-25 cm length).

C. Jewelry - various shapes and sizes.

1. Pendants.

2. Earplugs.

3. Necklaces.

D. Stelae, Ritual Objects, Architectural Elements - Carved in low relief with scenes of war, ritual or political events, portraits of rulers or nobles, often inscribed with glyphic texts. Sometimes covered with stucco and painted. The size of stelae and architectural elements such as lintels, posts, steps, decorative building blocks range from .5 meters to 2.5 meters in height. Hachas (thin, carved human or animal heads in the shape of an axe), yokes, and other carved ritual objects are under 1 meter in length or height, but vary in size.

E. Tools and Weapons.

1. Arrowheads (3-7 cm length).

2. Axes, adzes, celts (3-16 cm length).

3. Blades (4-15 cm length).

4. Chisels (20-30 cm length).

5. Spearpoints (3-10 cm length).



6. Eccentric shapes (10-15 cm length).
7. Grindingstones (30-50 cm length).

F. Vessels and Containers.

1. Bowls (10-25 cm ht).
2. Plates/Dishes (15-40 cm diam).
3. Vases (6-23 cm ht).

III. Metal (gold, silver, or other) - Cast or beaten into the desired form, decorated with engraving, inlay, punctured design or attachments. Often in human or stylized animal forms.

A. Jewelry -- various shapes and sizes.

1. Necklaces.
2. Bracelets.
3. Disks.
4. Earrings or earplugs.
5. Pendants.

B. Figurines -- (5-10 cm ht).

C. Masks -- (15 -- 25 cm length).

IV. Shell -- Decorated with cinnabar and incised lines, sometimes with jade applied.

A. Figurines -- human and animal (2-5 cm ht).

B. Jewelry -- various shapes and sizes.

1. Necklaces.
2. Bracelets.

3. Disks.
4. Earrings or earplugs.
5. Pendants.

C. Natural Forms - often with incised designs, various shapes and sizes.

V. Animal Bone - Carved or incised with geometric and animal designs and glyphs.

A. Tools -- various sizes.

1. Needles.
2. Scrapers.

B. Jewelry -- various shapes and sizes.

1. Pendants.
2. Beads.
3. Earplugs.

Ecclesiastical Ethnological Material (dating from approximately A.D. 1524 to 1821)

VI. Sculpture - Sculptural images of scenes or figures, carved in wood and usually painted, relating to ecclesiastical themes, such as the Virgin Mary, saints, angels, Christ, and others.

A. Relief Sculptures – circular-shaped, low-relief plaques, often polychrome wood, relating to ecclesiastical themes.

B. Sculpted Figures – wood carvings of figures relating to ecclesiastical themes, often with moveable limbs, usually with polychrome painting of skin and features; clothing might be sculpted and painted, or actual fabric clothing might be added.

C. Life-Sized Sculptures – full figure wood carvings of figures relating to ecclesiastical themes, often with polychrome painting using the estofado technique, and occasionally embellished with metal objects such as halos, aureoles, and staves.

VII. Painting - paintings illustrating figures, narratives, and events relating to ecclesiastical themes, usually done in oil on wood, metal, walls, or canvas (linen, jute, or cotton).

A. Easel Paintings - pictorial works relating to ecclesiastical themes on wood, metal, or cloth (framed or applied directly to structural walls).

B. Mural Paintings - pictorial works, executed directly on structural walls, relating to ecclesiastical themes.

VIII. Metal - ritual objects for ceremonial ecclesiastical use made of gold, silver, or other metal, including monstrances, lecterns, chalices, censers, candlesticks, crucifixes, crosses, and tabernacles; and objects used to dress sculptures, such as crowns, halos, and aureoles, among others.

#### **INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reasons, a delayed effective date is not required.

#### **REGULATORY FLEXIBILITY ACT**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

## **EXECUTIVE ORDER 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

### **SIGNING AUTHORITY**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### **LIST OF SUBJECTS IN 19 CFR PART 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

### **AMENDMENT TO CBP REGULATIONS**

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

### **PART 12 – SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

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#### **§ 12.104g(a) [Amended]**

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Guatemala by:

a. In the column headed "Cultural Property," removing the period and adding the following words: ", and ecclesiastical ethnological materials dating from the Conquest and Colonial periods, c. A.D. 1524 to 1821.", and

b. In the column headed "Decision No.," removing the reference to "T.D. 97-81 extended by CBP Dec. 07-79" and adding in its place "CBP Dec. 12-17".

David V. Aguilar  
Deputy Commissioner  
U.S. Customs and Border Protection

Approved: September 25, 2012

Timothy E. Skud  
Deputy Assistant Secretary of the Treasury

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